

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

BRIAN GALLAGHER,)
)
Plaintiff,)
)
vs.) Case No.:
)
THOMAS J. DART, SHERIFF OF COOK)
COUNTY ILLINOIS, THE COOK COUNTY)
MERIT BOARD; JAMES P. NALLY,)
CHAIRMAN; VINCENT T. WINTERS,)
BOARDMEMBER; PATRICK BRADY,)
BOARDMEMBER; GRAY MATEO-HARRIS,)
KIM R. WIDUP, BOARDMEMBER; BYRON)
T. BRAZIER, BOARDMEMBER; JENNIFER E.)
BAE, BOARDMEMBER and JOHN J.)
DALICANDRO, BOARDMEMBER,)
)
Defendants.)

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1331, 1441 and 1446, Defendant Thomas J. Dart, Sheriff of Cook County, Illinois, provides this Notice of Removal of the action currently pending in the Circuit Court of Cook County, Illinois Chancery Division No. 2017 CH 03707 to the United States District Court for the Northern District of Illinois, Eastern Division. The grounds for removal are as follows:

1. On March 14, 2017, Plaintiff filed a one count complaint against Defendant Dart in the Circuit Court of Cook County, Illinois Chancery Division No. 2017 CH 03707 seeking administrative review of a decision to terminate Gallagher on account of unauthorized absences.
2. On October 10, 2017, Defendant Dart received for the first time a copy of Plaintiff's Amended Complaint when Plaintiff's counsel personally handed counsel for Sheriff Dart a copy of the Amended Complaint while they were at a state court hearing on the case. In his Amended

Complaint, the plaintiff for the first time alleged violations of the Americans with Disabilities Act 42 U.S.C. §12101, *et seq.* (“ADA”) (Amended Complaint Count II ¶¶1-27), a violation of the Family Medical Leave Act, 29 U.S.C. §2601, *et seq.* (“FMLA”) (Amended Complaint Count III ¶¶1-29), and a violation of the Consolidated Omnibus Budget Reconciliation Act of 1985, 29 U.S.C. §1161, *et seq.* (“COBRA”) (Amended Complaint Count IV ¶¶1-10).

3. By pleading these new federal claims against Defendant Dart, the case became removable on October 10, 2017. 28 U.S.C. §1446(b)(3) (“a notice of removal may be filed within 30 days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it first may be ascertained that the case is one which is or has become removable.”); *See also Walker v. Trailer Transit, Inc.*, 727 F.3d 819, 824 (7th Cir. 2013)(30 day period to remove starts when defendant receives pleading that “affirmatively and unambiguously” reveals basis for removal).

4. This Notice of Removal, filed November 6, 2017, has been timely filed. 28 U.S.C. §1446(b)(3).

5. Each of the new federal claims falls within federal jurisdiction. “The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. §1331. In the case of the COBRA claim, federal jurisdiction is exclusive. 29 U.S.C. §1132(e)(1) (“Except for actions under subsection (a)(1)(B) of this section, the district courts of the United States shall have exclusive jurisdiction of civil actions under this title brought by the Secretary or by a participant, beneficiary, or any person referred to in section 101(f)(1).”).

6. This Court has jurisdiction of the newly pleaded federal causes of action, 28 U.S.C. §1331, and removal of them is proper. 28 U.S.C. §1441(a).

7. In addition, the district court has supplemental jurisdiction over Count I of the Amended Complaint (Petition for Administrative Review) because Count I is related to the claims alleged against Defendant Dart in the ADA, FMLA and COBRA causes of action. 28 U.S.C. §1367(a); *Ammerman v. Sween*, 54 F.3d 423, 424 (7th Cir.1995)(“28 U.S.C. §1367(a) authorize[s] federal courts to hear all claims that are ‘so related to claims in the action within such original jurisdiction that they form part of the same case or controversy.’”); *See also, City of Chicago v. Int'l College of Surgeons*, 522 U.S. 156, 164-165 (1997)(review of administrative findings combined with federal question claims was properly removed to federal court).

8. Pursuant to 28 U.S.C. §1446(a), a copy of all process, pleadings and orders served upon Defendant Dart in the case are attached as Exhibit A.

9. Pursuant to 28 U.S.C. § 1446(d), Defendant Dart is providing written notice of the filing of this Notice of Removal to Plaintiff Gallagher and Defendants Cook County Sheriff's Merit Board, James P. Nally, Vincent T. Winters, Patrick Brady, Gray Mateo-Harris, Kim R. Widup, Byron T. Brazier, Jennifer E. Bae, John J. Dalicandro via email and U.S. Mail and shall file a copy of the Notice of Removal including attachments with the Clerk of the Circuit Court of Cook County.

10. Pursuant to 28 U.S.C. §1446(b)(2)(A), Defendants Cook County Sheriff's Merit Board, James P. Nally, Vincent T. Winters, Patrick Brady, Gray Mateo-Harris, Kim R. Widup, Byron T. Brazier, Jennifer E. Bae, and John J. Dalicandro consent to removal of this action to the United States District Court for the Northern District of Illinois pursuant to the consent form attached as Exhibit B.

11. Pursuant to 28 U.S.C. §1441(a), venue is appropriate in this district because the Circuit Court of Cook County, Illinois is located in the same county as and within the United States District Court for the Northern District of Illinois, Eastern Division.

WHEREFORE, Defendant Thomas J. Dart removes this case to the United States District Court for the Northern District of Illinois Eastern Division.

/s/Stephanie A. Scharf

Stephanie A. Scharf

Sarah R. Marmor

Corinne C. Heggie

SCHARF BANKS MARMOR LLC

333 West Wacker Drive, Suite 450

Chicago, IL 60606

Ph. 312-726-6000

sscharf@scharfbanks.com

smarmor@scharfbanks.com

cheggie@scharfbanks.com

CERTIFICATE OF SERVICE

I, the undersigned attorney, hereby certify that a true and correct copy of the foregoing Notice of Removal has been served via email and United States Mail on the persons on the Service List below on this, the 6th day of November, 2017.

/s/Stephanie A. Scharf
Stephanie A. Scharf

Stephen C. Debboli
218 N. Jefferson Street
Suite 101
Chicago, IL 60661
Ph: 312-207-0000
sdebboli@snnlaw.com
Attorney for Plaintiff Brian Gallagher

Cathy McNeil Stein
State's Attorney of Cook County
Conflicts Counsel Unit
69 W. Washington St., Suite 2030
312-603-1424
cathymcneil.stein@cookcountylil.gov
Attorney for Defendants Cook County Sheriff's Merit Board, James P. Nally, Chairman; Vincent T. Winters, Boardmember; Patrick Brady, Boardmember; Gray Mateo-Harris, Kim R. Widup, Boardmember; Byron T. Brazier, Boardmember; Jennifer E. Bae, Boardmember, and John J. Dalicandro, Boardmember